10 USC 2539b

Availability of samples, drawings, information, equipment, materials, and certain services

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• (a)(1) sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;
• (a)(2) sell, rent, or lend government equipment or materials to any person or entity—
  – (A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or
  – (B) for use in demonstrations to a friendly foreign government;
• (a)(3) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items; and
• (a)(4) make available to any person or entity, through leases, contracts, or other appropriate arrangements, facilities, services, and equipment of any government laboratory, research center, or range, if the facilities, services, and equipment provided will not be in direct competition with the domestic private sector.
Why does 2539b exist?

- To promote R&D in the commercial sector
- To promote T2 from the military to the commercial sector.
- To improve the quality of the Defense Labs
- To increase the Labs’ ability to better perform their designated missions
- Utilize taxpayer-funded infrastructure to support private sector activities.
• Legislative History
  – Introduced as 10 USC 2541 in FY94 NDAA
  – Changed to 2539b in FY95
  – Section (a)(4) added in 2008

• Delegation History
  – 1996 – NUWC Keyport delegated authority to use (a)(3)
  – 17 Apr 1997 - Kaminski letter delegated approval authority for (a)(3) to Directors/Commanders of any gov’t lab
  – 9 May 2012 – SECNAV delegated approval authority for (a)(3) & (a)(4) to Directors/Commanders of any gov’t lab
10 USC 2539b -- Conditions for Use

• Commercial Non-Availability
  – private party must provide written statement
• No expansion of capabilities or capacity
• Not to interfere with Lab’s USN mission
• Recoup all costs
• Confidentiality of test results (a)(3)
• Payment must be provided in advance
• Recipient must indemnify the gov’t
• No Warranty provided for government work
10 USC 2539b – Examples of Use

• Subsection (a)(3)
  – In-water testing on 3-D instrumented tracking ranges
  – Environmental testing
  – Software Certification testing

• Post 2012, including subsection (a)(4)
  – Continued use to provide Testing Services
  – Lease of Acoustic Pinger
  – Provision of Engineering Services
  – Obsolescence Management Services
  – Crane certification services & safety training
2539b or CRADA? Which one to use?

• Differences in Relationship
  – 2539b – USN is Service Provider
  – CRADA – USN is Collaborator

• Differences in Financial Constraints
  – 2539b – Must Recoup all Costs
  – CRADA – Less Restrictive Financial Constraints

• CRADA is used to create a new in a collaborative relationship

• 2539b is used to provide services at cost
• Company presents Purchase Order for us to sign
  – Answer – We don’t sign their PO’s -- 2539b is the enabling statute and our WWPP agreement is the controlling document

• Company wants to impose FAR flow-down clauses
  – Answer – FAR flow down doesn’t apply. However, if they really want/need deliverables related to FAR flow down requirements, include those as deliverables described in the agreement SOW.
• Instructions/Regulations/Policies
  – DOD FMR (DoD 7000.14-R) Volume 11A, Chapter 14
  – DODI 5535.11
  – NUWCHQ/NSWCHQ INSTRUCTION 5800.1c